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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,943	12/27/2000	Gregory C. Flickinger	T721-17	6477

27832 7590 02/23/2004

EXPANSE NETWORKS, INC.
6206 KELLERS CHURCH ROAD
PIPERSVILLE, PA 18947

EXAMINER

BUI, KIEU OANH T

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/748,943

Applicant(s)

FLICKINGER ET AL.

Examiner

KIEU-OANH T BUI

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: SEE THE ATTACHMENT
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 17-36.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Response to After Final Arguments

1. Applicant's arguments filed on 1/22/04 have been fully considered but they are not persuasive.

Applicants consistently argues through out the Response to the Final Office Action that Hendricks does not clearly teaches or suggest all the features of independent claims 17, 27, and 32, wherein the focus limitation is on “the advertisements are transmitted at a bandwidth **less then** the bandwidth required to present the advertisement in real time” and “the advertisements are transmitted in advance of presentation to the subscribers and are stored in a storage medium”. First, it should have caught as a 112-2nd issue, because of the wording “less then” instead of “less than” for the sentence to make sense.

Then, as explained in the Final Office action, and somehow, the Applicants misread the Hendricks' reference, because the Examiner strongly believes Hendricks mentions and teaches this limitation. In summary, Hendricks teaches to target the subscribers with local advertisement insertion using a spot placement engine (as shown in Figs. 4c & 4d), and the advertisement technique is first using available feeder channels to efficiently convey target advertisements either in real-time or non real-time to subscribers (col. 4/lines 25-53). The bandwidth of feeder channels is considered to be low bandwidth because “available feeder channels maybe shared across several program channels (inherency applied), and their allocation must be managed and optimized” since the advertisements just need some breaks along the programs to be inserted at some frequency intervals of times, not all the time (see col. 5/lines 29-51). The commercial channels as illustrated in Figure 32 shows a 6MHz bandwidth allocation method and a technique of additional bandwidth allocation, if one needs more bandwidth (col. 73/lines 13-54). Clearly,

Art Unit: 2611

one does not need to use all of the 6MHz bandwidth, of course, an ad with a 1MHz or 2MHz bandwidth can be transmitted on that channel for sure. Therefore, the step of “the advertisements are transmitted at a bandwidth **less than** the bandwidth required to present the advertisement in real time” is met for these reasons.

Furthermore, specifically, in column 34, lines 45-67, Hendricks teaches that the advertisements need not to be in real-time all of the time, and the target advertisement can be stored in the set top terminal or either broadcasting directly from the operations center or the cable headend.

Therefore, the Examiner believes that each and every limitation is already addressed in the Office Action, at least in a sense of broad claim languages presented for examination.

In order for the claim languages to be in a condition for allowance, Applicants must point out clearly the novelty of the application with stated and defined claim languages in a well structure manner over the prior arts, for now is the Hendricks and the Schoenblum references, as disclosed

Conclusion

2. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

Hand-delivered responses should be brought to Crystal Park IV, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

or faxed to:

(703) 872-9306, (for Technology Center 2600 only)

Art Unit: 2611

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krista Kieu-Oanh Bui whose telephone number is (703) 305-0095. The examiner can normally be reached on Monday-Friday from 9:00 AM to 6:30 PM, with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile, can be reached on (703) 305-4380.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 306-0377.

Krista Bui
Art Unit 2611
February 13, 2004



VIVEK SRIVASTAVA
PRIMARY EXAMINER